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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 13-2]

Star Networks USA, LLC; Complaint

AGENCY: Consumer Product Safety Commission

ACTION: Publication of a Complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint: In the Matter of Star Networks USA, LLC.¹

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

Dated: December 18, 2012.

Todd A. Stevenson,
Secretary.

¹ Chairman Inez M. Tenenbaum and Commissioner Robert S. Adler voted to authorize the Complaint. Commissioner Nancy A. Nord voted to not authorize the Complaint.

In the Matter of
 STAR NETWORKS USA, LLC
 Respondent.

CPSC DOCKET NO. 13-2

Nature of Proceedings

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission (“Commission”), 16 C.F.R. part 1025.

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3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d), and (f) of the CPSA, 15 U.S.C § 2064 (c), (d), and (f).

Parties

4. Complaint Counsel is the staff of the Division of Compliance within the Office of the General Counsel of the Commission (“Complaint Counsel”). The Commission is an independent federal regulatory agency established pursuant to Section 4 of the CPSA, 15 U.S.C. § 2053.

5. Upon information and belief, Star is a New Jersey corporation with its principal place of business located at 26 Commerce Road, Suite B, Fairfield, New Jersey, 07004.

6. Respondent is an importer and distributor of the Subject Products.

7. As an importer and distributor of the Subject Products, Respondent is a “manufacturer” and “distributor” of a “consumer product” that is “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5),(7), (8), and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(5),(7), (8), and (11).

The Consumer Product

8. Respondent imported and distributed the Subject Products in U.S. commerce and offered them for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, and in recreation or otherwise.

9. Upon information and belief, the Subject Products consist of small, individual magnets that are packaged as aggregated masses in different sized containers holding 125, 216,

250, 343 or 1,027 small magnets, ranging in size from approximately 5.0 mm to 6.0 mm, with a variety of coatings, and a flux index greater than 50.

10. Upon information and belief, the flux index of the Magnicube Spheres ranges from 435.1 to 876.5 kg²mm.²

11. Upon information and belief, the flux index of the Magnicube Cubes ranges from 441.9 to 496.4 kg²mm.²

12. Upon information and belief, Magnicubes Spheres were introduced into U.S. commerce sometime after August 2010.

13. Upon information and belief, Magnicubes Cubes were introduced into U.S. commerce sometime after August 2010.

14. Upon information and belief, the Subject Products are manufactured by Dongyang Huale Electronics, LTD, Hengdian Industrial Area, Dongyang Zhejiang, China.

15. Upon information and belief, the Subject Products are sold in velvet-lined boxes or foam-lined tins.

16. Upon information and belief, the Subject Products range in retail price from approximately \$19.95 to \$79.95.

17. Upon information and belief, more than 21,000 sets of Magnicube Spheres have been sold to consumers in the United States.

18. Upon information and belief, more than 480 sets of Magnicube Cubes have been sold to consumers in the United States.

19. Upon information and belief, approximately 17 mixed sets of 125 Magnicube Spheres and 125 Magnicube Cubes marketed as the Magnicube Duo Edition have been sold to consumers in the United States.

COUNT I

The Subject Products are Substantial Product Hazards Under Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), Because They Contain Product Defects That Create a Substantial Risk of Injury to the Public

The Subject Products are Defective Because Their Instructions, Packaging, and Warnings Are Inadequate

20. Paragraphs 1 through 19 are hereby realleged and incorporated by reference as though fully set forth herein.

21. A defect can occur in a product's contents, construction, finish, packaging, warnings and/or instructions. 16 C.F.R. §1115.4

22. A defect can occur when reasonably foreseeable consumer use or misuse, based in part on lack of adequate instructions and safety warnings, could result in injury, even where there are no reports of injury. 16 C.F.R. §1115.4

23. Upon information and belief, Star offered the Subject Products for sale sometime after August 2010 through December 2012 on its direct-sales website, www.magnicube.com.

24. Upon information and belief, sometime after August 2010 through December 2012, Star's U.S. Direct sales website contained the following warning regarding the Subject Products: **"Keep Away from All Children!** This product is NOT intended to be inhaled or swallowed, magnets should not be put in those nose or mouth. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magnets are inhaled or swallowed. Recommended age 14+."

25. Upon information and belief, from sometime after August 2010 through December 2012, the "Safety Notice" page of Star's Direct sales website contained the following warning regarding the Subject Products: "Magnicube products are NOT toys for children[.]

Recommended age 14+. Magnicube Magnet Balls and Magnet Cubes are not manufactured, distributed, promoted, labeled, or intended for children. Ingestion Hazard – This product represents an ingestion Hazard, DO NOT ingest magnets. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magnets are inhaled or swallowed.”

26. Upon information and belief, Star offered the Subject Products for sale from November 2011 through July 2012, on Amazon.com, Inc.’s website www.amazon.com.

27. Upon information and belief, from November 2011 through July 2012 Star’s product listing for the Subject Products on the Amazon.com, Inc.’s website contained the following warning: **WARNING: CHOKING HAZARD** – WARNING: KEEP AWAY FROM ALL CHILDREN. Do not put in mouth or nose. This product contains small magnets. Swallowed magnets can stick together across intestines causing serious infections and death. Seek immediate medical attention if magnets or swallowed or inhaled. **CHOKING HAZARD** – This toy is a marble. Not for children under 3 yrs. **CHOKING HAZARD** – This toy is a small ball. Not for children under 3 yrs. **CHOKING HAZARD** – Small parts. Not for children under 3 yrs. **CHOKING HAZARD** – Toy contains a small ball. Not for children under 3 yrs.”

28. Upon information and belief, on or about June 14, 2012, Star authorized online discount retailer Groupon, Inc. to issue an internet offer for the sale of the Subject Products on Groupon, Inc.’s website, www.groupon.com.

29. Upon information and belief, the Groupon internet offer contained the following warning: “Recommended for ages 14 and up. Keep out of reach of children.”

30. Upon information and belief, sets of the Subject Products are currently sold in tins with the following warning printed on a sticker on the underside of the tin:

WARNING: Keep Away From All Children! This product is NOT intended to be inhaled or swallowed, magnets [*sic*] should not be put in nose or mouth. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magnets are inhaled or swallowed. Recommended age 14+.”

31. Upon information and belief, sets of the Subject Products are currently sold in boxes with following warning printed on the underside of a cardboard sleeve that wraps around the box:

WARNING: Keep Away From All Children! This product is NOT intended to be inhaled or swallowed, magnets [*sic*] should not be put in nose or mouth. Magnets that are inhaled or swallowed may stick to intestines, which may lead to serious injury or death. Immediate medical attention is required if magnets are inhaled or swallowed. Recommended age 14+.”

32. Upon information and belief, the Subject Products are packaged without any instructions.

33. Before and after the Subject Products were introduced into commerce sometime after August 2010, many children under the age of 14 have ingested products (the “Ingested Products”) that are almost identical in form, substance, and content to the Subject Products.

34. Upon information and belief, the Ingested Products are marketed and used in substantially similar ways to the Subject Products.

35. Upon information and belief, on or about January 28, 2010, a 9-year-old boy used high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products to mimic tongue and lip piercings, and accidentally ingested seven magnets. He was treated at an emergency room.

36. Upon information and belief, on or about September 5, 2010, a 12-year-old girl accidentally swallowed two high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products. She sought medical treatment at a hospital, including x-rays and monitoring for infection and damage to her gastrointestinal tract.

37. Upon information and belief, on or about December 23, 2010, a 3-year-old girl ingested eight high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products that she found on a refrigerator in her home. She required surgery to remove the magnets. The magnets caused intestinal and stomach perforations, and had also become embedded in the girl's trachea and esophagus.

38. Upon information and belief, on or about January 6, 2011, a 4-year-old boy suffered intestinal perforations after ingesting three high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products that he thought were chocolate candy because they looked like the decorations on his mother's wedding cake.

39. By November 2011, the Commission was aware of approximately 22 reports of ingestions of high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products.

40. On November 11, 2011, the Commission issued a public safety alert warning the public of the dangers of the ingestion of rare earth magnets like the Subject Products.

41. Ingestion incidents, however, continue to occur.

42. Since the safety alert, the Commission has received dozens of reports of children ingesting high-powered, small, spherically-shaped magnets that are almost identical in form, substance, and content to the Subject Products, but may be manufactured and/or sold by firms other than the Respondent.

43. Upon information and belief, on or about January 17, 2012, a 10-year-old girl accidentally ingested two high-powered, small, spherically-shaped magnets almost identical in form, substance, and content to the Subject Products after using them to mimic a tongue piercing. The magnets became embedded in her large intestine, and she underwent x-rays, CT scans, endoscopy, and an appendectomy to remove them. The girl's father had purchased the magnets for her at the local mall.

44. All warnings on the Subject Products and/or on the websites where the Subject Products are or were offered for sale are inadequate and defective because they do not and cannot effectively communicate to consumers, including parents and caregivers, the hazard associated with the Subject Products and magnet ingestions.

45. Because the warnings on the Subject Products and/or on the websites where the Subject Products are or were offered for sale are inadequate and defective, parents will continue to give children the Subject Products or allow children to have access to the Subject Products.

46. Parents and caregivers are unlikely to appreciate the hazard associated with the product because the product warnings refer to the product as a "marble" and as a "small ball." This product description suggests that the potential health risk posed by the Subject Products is

from choking, rather than intestinal perforations or other gastrointestinal injuries that can result if more than one magnet ball is swallowed.

47. Children cannot and do not appreciate the hazard, and it is foreseeable that they will mouth the items, swallow them, or, in the case of adolescents and teens, use them to mimic body piercings. These uses can and do result in injury.

48. All warnings on the packaging of the Subject Products are inadequate and defective because the font-size of the warnings hinders legibility and may discourage consumers from reading the warning message, making it less likely that consumers will review the warnings on the packaging prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

49. All warnings on the packaging and/or carrying cases of the Subject Products are inadequate and defective because the placement of the warnings only on the underside of the packaging and/or carrying case renders the warnings inconspicuous such that consumers likely will not review the warnings prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

50. All warnings on the Subject Products that are packaged in boxes are inadequate and defective because the cardboard sleeve on which the warnings are written is not necessary for use of the Subject Products and is often discarded. Because the cardboard sleeve is unnecessary and is often discarded, consumers likely will not review the warnings on the packaging prior to foreseeable uses of the Subject Products. These uses can and do result in injury.

51. All warnings on the Subject Products are inadequate and defective because once the Subject Products are removed from the packaging and/or the carrying case prior to foreseeable uses of the Subject Products, the magnets themselves display no warnings, and the small size of the individual magnets precludes the addition of warnings. These uses can and do result in injury.

52. All warnings on the Subject Products are inadequate and defective because the magnets are shared and used among various consumers, including children, after the packaging is discarded; thus, many consumers of the Subject Products will have no exposure to any warnings prior to using the Subject Products. These uses can and do result in injury.

53. All warnings displayed on the carrying cases, if any, are inadequate and defective because consumers are unlikely to disassemble configurations made with the Subject Products after each use, many of which are elaborate and time-consuming to create, to return the Subject Products to the carrying case or to put the Subject Products out of the reach of children.

54. The effectiveness of the warnings on the Subject Products is further diminished by the advertising and marketing of the Subject Products.

55. Upon information and belief, as late as May 2012, Star was aware that the Subject Products were displayed with other toys on the Amazon.com, Inc.'s website.

56. Upon information and belief, as of November 2012, Respondent advertised the Subject Products on its direct sale website as a "toy," encouraging consumers to "get out of your daze with your new toy."

57. Upon information and belief, the Subject Products are described on Star's direct sales website as a magnetic puzzle, a 3d puzzle, and magnetic puzzle gift items that are typically considered playthings for children under the age of 14.

58. The advertising and marketing of the Subject Products conflict with the claimed 14+ age grade label on the Subject Products.

59. Because the advertising and marketing of the Subject Products conflict with the age label, the effectiveness of the age label is diminished.

60. The advertising and marketing of Subject Products conflict with the stated warnings on the Subject Products.

61. Because the advertising and marketing conflict with the stated warnings, the effectiveness of the warnings is diminished.

62. No warnings or instructions could be devised that would effectively communicate the hazard in a way that would be understood and heeded by consumers and would reduce the incidences of magnet ingestions.

63. Because of the lack of adequate instructions and safety warnings, a substantial risk of injury occurs as a result of the foreseeable use and misuse of the Subject Products.

The Subject Products Are Defective Because the Risk of Injury Occurs as a Result of Its Operation and Use and the Failure of the Subject Products to Operate as Intended

1. A design defect can be present if the risk of injury occurs as a result of the operation or use of the product or a failure of the product to operate as intended. 16 C.F.R. § 1115.4.

2. The Subject Products contain a design defect because they present a risk of injury as a result of their operation and/or use.

3. Upon information and belief, the Subject Products have been advertised and marketed by the Respondent to both children and adults.

4. As a direct result of such marketing and promotion, the Subject Products have been, and are currently used by, both children and adults.

5. The risk of injury occurs as a result of the use of the Subject Products by adults, who give the Subject Products to children or allow children to have access to the Subject Products.

6. The risk of injury occurs as a result of the foreseeable use and/or misuse of the Subject Products by children.

7. The Subject Products contain a design defect because they fail to operate as intended and present a substantial risk of injury to the public.

8. Upon information and belief, Respondent contends that the Subject Products are manipulatives that provide stress relief and other benefits to adults only.

9. The Subject Products are intensely appealing to children due to their tactile features, their small size, and their highly reflective, shiny metallic and colorful coatings.

10. Certain sets of the Subject Products come in bright color combinations which are likely to add to the perception that the magnets are intended to appeal to children because they offer creative value as puzzles, models, or art by combining magnetism and color.

11. The Subject Products are also appealing to children because they are smooth, unique, and make a soft snapping sound as they are manipulated.

12. The Subject Products also move in unexpected, incongruous ways as the poles on the magnets move to align properly, which can evoke a degree of awe and amusement among children enticing them to play with the Subject Products.

13. Despite the Respondent's current age label and asserted use of the Subject Products, they do not operate as intended because they are intensely appealing to and are often played with by children.

14. This defective design of the Subject Products poses a risk of injury because parents and caregivers buy the Subject Products for children and/or allow children to play with the Subject Products.

The Type of the Risk of Injury Renders the Subject Products Defective

15. The risk of injury associated with a product may render the product defective. 16 C.F.R. § 1115.4.

16. Upon information and belief, the Subject Products have low utility to consumers.

17. Upon information and belief, the Subject Products are not necessary to consumers.

18. The nature of the risk of injury includes serious, life-threatening, and long-term health conditions that can result when magnets attract to each other through intestinal walls, causing harmful tissue compression that can lead to perforations, fistulas, and other gastrointestinal injuries.

19. Children, a vulnerable population protected by the CPSA, are exposed to risk of injury by the Subject Products.

20. The risk of injury associated with the ingestion of the Subject Products is neither obvious nor intuitive.

21. Warnings and instructions cannot adequately mitigate the risk of injury associated with ingesting the Subject Products.

22. Children mouthing and ingesting the Subject Products is foreseeable.

23. Children using the Subject Products for body art, including mimicking tongue piercings, is foreseeable.

24. The type of the risk of injury renders the Subject Products defective.

The Subject Products Create a Substantial Risk of Injury to the Public

25. The Subject Products pose a risk of magnet ingestion by children below the age of 14, who may, consistent with developmentally appropriate behavior, place a single magnet or numerous magnets in their mouth.

26. The risk of ingestion also exists when adolescents and teens use the Subject Products to mimic piercings of the mouth, tongue, and cheek and accidentally swallow the magnets.

27. If two or more of the magnets are ingested and the magnetic forces of the magnets pull them together, the magnets can pinch or trap the intestinal walls or other digestive tissue between them, resulting in acute and long-term health consequences. Magnets that attract through the walls of the intestines result in progressive tissue injury, beginning with local inflammation and ulceration, progressing to tissue death, then perforation or fistula formation. Such conditions can lead to infection, sepsis, and death.

28. Ingestion of more than one magnet often requires medical intervention, including endoscopic or surgical procedures.

29. Because the initial symptoms of injury from magnet ingestion are nonspecific and may include nausea, vomiting, and abdominal pain, caretakers, parents, and medical professionals may easily mistake these nonspecific symptoms for other common gastrointestinal upsets, and erroneously believe that medical treatment is not immediately required, thereby delaying potentially critical treatment.

30. Medical professionals may not be aware of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring. A delay of surgical intervention or other medical treatment due to the presentation of nonspecific symptoms and/or a lack of awareness by medical personnel of the dangers posed by multiple magnet ingestion can exacerbate life-threatening internal injuries.

31. Magnets that become affixed through the gastrointestinal walls and are not surgically removed may result in intestinal perforations which can lead to necrosis, the formation of fistulas, or ultimately, perforation of the bowel and leakage of toxic bowel contents into the abdominal cavity. These conditions can lead to serious injury and possibly even death.

32. Endoscopic and surgical procedures may also be complicated in cases of multiple magnet ingestion due to the attraction of the magnets to the metal equipment used to retrieve the magnets.

33. Children who undergo surgery to remove multiple magnets from their gastrointestinal tract are also at risk for long-term health consequences, including intestinal

scarring, nutritional deficiencies due to loss of portions of the bowel, and, in the case of girls, fertility problems.

34. The Subject Products contain defects in packaging, warnings, and instructions, that create a substantial risk of injury to the public.

35. The Subject Products contain defects in design that pose a substantial risk of injury.

36. The type of the risk of injury posed by the Subject Products creates a substantial risk of injury.

37. Therefore, because the Subject Products are defective and create a substantial risk of injury, the Subject Products present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

COUNT II

The Subject Products Are Substantial Product Hazards Under Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1)

38. Paragraphs 1 through 100 are hereby realleged and incorporated by reference as though fully set forth herein.

39. Upon information and belief, each of the Subject Products is an object designed and/or manufactured as a plaything for children under 14 years of age, and, therefore, each of the Subject Products that was imported and/or otherwise distributed in commerce after August 16, 2009, is a “toy” as that term is defined in ASTM International Standard F963-08, *Standard Consumer Safety Specification for Toy Safety*, section 3.1.72 and its most recent version, ASTM 963-11 section 3.1.81 (“the Toy Standard”).

40. As toys, and as toys intended for use by children under 14 years of age as addressed in the Toy Standard, the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009, were and are covered by the Toy Standard.

41. Pursuant to the Toy Standard, a magnet that has a flux index greater than 50 and that is a small object as determined by the Toy Standard is a “hazardous magnet.”

42. The Toy Standard prohibits toys from containing a loose as-received hazardous magnet.

43. The Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 consist of and contain loose as-received hazardous magnets. As a result, the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 fail to comply with the Toy Standard.

44. The Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 create a substantial risk of injury to the public.

45. Because the Subject Products that were imported and/or otherwise distributed in commerce after August 16, 2009 fail to comply with the Toy Standard and create a substantial risk of injury to the public, they are substantial product hazards as the term “substantial product hazard” is defined in Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1).

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that the Subject Products present a “substantial product hazard” within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), and/or presents a “substantial product hazard” within the meaning of Section 15(a)(1) of the CPSA, 15 U.S.C. § 2064(a)(1).

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), is required to adequately protect children from the substantial product hazard presented by the Subject Products, and order Respondents under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c) to:

- (1) Cease importation and distribution of the Subject Products;
- (2) Notify all persons that transport, store, distribute or otherwise handle the Subject Products, or to whom such product has been transported, sold, distributed or otherwise handled, to immediately cease distribution of the products;
- (3) Notify appropriate state and local public health officials;
- (4) Give prompt public notice of the defects in the Subject Products, including the incidents and injuries associated with ingestion including posting clear and conspicuous notice on Respondent’s website, and providing notice to any third party website on which Respondent has placed the Subject Products for sale, and provide further announcements in languages other than English and on radio and television;
- (5) Mail notice to each distributor or retailer of the Subject Products; and
- (6) Mail notice to every person to whom the Subject Products were delivered

or sold;

C. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. § 2064(d), is in the public interest and additionally order Respondent to:

- (1) Refund consumers the purchase price of the Subject Products;
- (2) Make no charge to consumers and to reimburse consumers for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter, as provided by Section 15 U.S.C. § 2064(e)(1);
- (3) Reimburse retailers for expenses in connection with carrying out any Commission Order issued in this matter, including the costs of returns, refunds and/or replacements, as provided by Section 15(e)(2) of the CPSA, 15 U.S.C. § 2064(e)(2);
- (4) Submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in Paragraphs B(1) through (6) and C(1) through (3) above be taken in a timely manner;
- (5) To submit monthly reports, in a format satisfactory to the Commission, documenting the progress of the corrective action program;
- (6) For a period of five (5) years after issuance of the Final Order in this matter, to keep records of its actions taken to comply with Paragraphs B(1) through (6) and C(1) through (4) above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order;
- (7) For a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its

business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter; and

D. Order that Respondent shall take other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

ISSUED BY ORDER OF THE COMMISSION:

Dated this 17th day of December, 2012

BY: Kenneth R. Hinson
Executive Director

U.S. Consumer Product Safety Commission
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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2012, I served the foregoing Complaint and List and Summary of Documentary Evidence upon all parties of record in these proceedings by mailing, certified mail, postage prepaid, a copy to each at their principal place of business, and e-mailing a courtesy copy, as follows:

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